

(1934) 12 AHC CK 0037
In the Allahabad High Court

Mt. Deba

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 21-12-1934

Acts Referred:

Court Fees Act, 1870 — Section 12(1)

Citation : AIR 1935 All 455

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bennet, J.—This is an application in civil revision by a plaintiff under the following circumstances:

The plaintiff brought a suit in the Court of the Subordinate Judge of Farrukhabad for arrears of maintenance and a compromise was entered into and a decree was passed in terms of the compromise. The Subordinate Judge held that a court-fee of Rs. 715 should be paid which was on ten times the sum periodically payable, Rs. 150 p.m., taken for ten years as Rs. 18,000. Subsequently the plaintiff applied for execution and an appeal was heard by this Court, and this Court held that the decree was merely a declaratory decree and could not be executed. The plaintiff made an application to the lower Court for refund of Rs. 715 court-fee. The amount seems to be incorrect as there should be a deduction of Rs. 10 for a declaratory decree. The lower Court has held that it has no power to order the refund u/s 151, Civil P.C., and that the remedy of the plaintiff, if any, lies in the High Court. I consider that the case is governed by Section 12(1), Court-fees Act, as the learned Government Advocate contends. That section prescribes that every question of this nature in regard to a plaint shall be decided by the Court in which such plaint was filed. It does not lay down that the decision must be made only when the suit is pending. I consider that under the circumstances to this case, the application, of the plaintiff should have been treated as an application under Order 47, Rule 1, for review of his order by the Subordinate

Judge, the new and important matter discovered being that this Court had held that the decree was a declaratory decree. Under these circumstances the lower Court has failed to exercise a jurisdiction which the lower Court possessed, and therefore a revision lies to this Court. It was contended by the learned Government Advocate that under 1934 Gupta & Co. v. Kirpa Ram Brothers 1934 All. 620, a decision on a question of court-fee was not "a case decided." That ruling dealt with a decision while the suit was pending, but in the present case the decision is "a case decided" because the original suit has long ago terminated, and there is now no suit pending. I therefore allow this revision with costs and set aside the order of the lower Court and order that Rs. 705 should be repaid to the applicant Mt. Deba.